

Delegation of France

**STATEMENT BY THE DELEGATION OF FRANCE AT THE
1146th MEETING OF THE OSCE PERMANENT COUNCIL**

18 May 2017

In response to Azerbaijan

France wishes to exercise its right of reply following the statement by Azerbaijan, which expressed in particular concerns about the impact of the state of emergency on freedom of expression in France.

There are no double standards in the European Union, and the situation in France can be explained with full transparency.

Freedom of expression online

France believes that all fundamental freedoms, including freedom of expression, should enjoy the same protection and guarantees on the Internet as in the real world. There should be no hierarchy between these freedoms, and any restrictions should be in conformity with the limitations provided for in the International Covenant on Civil and Political Rights and with the rules of a State governed by the rule of law.

France condemns all censorship and arbitrary or general restriction of access and is committed to freedom of opinion, expression, information, assembly and association on the Internet, subject to respect for other fundamental rights.

France is also particularly active in combating the use of the Internet for terrorist purposes. We call for an improvement in the removal of content by Internet operators and a strengthening of co-operation with encrypted communication service providers as part of criminal inquiries.

France's action at the national level to combat terrorism on the Internet

Content inciting people to commit acts of terrorism or glorifying such acts can be identified: (i) by the Ministry of the Interior, (ii) by users, who report it on the platform for the harmonization, analysis, cross-checking and channelling of reports concerning illegal content or behaviour on the Internet (PHAROS), (iii) within Europol by the Internet Referral Unit (IRU), which was launched a year ago and is dedicated to the identification of content to be removed.

The French and European authorities have established regular and fruitful dialogue with the major Internet players to have this content removed when it is not hosted in France.

Law No. 2014-1353 of 13 November 2014 allows the administrative authorities to request publishers and web hosts to remove illegal content and to force Internet companies to block access to the offending sites or delist them (blocking sites in the case of Internet service providers and delisting them in the case of search engines and directories). To that end, in November 2016, 54 Internet sites glorifying terrorism were subject to an administrative measure and 319 sites were delisted by search engines.

Administrative blocking is carried out in France in line with a procedure strictly defined by law in the framework of the fight against terrorism (the aforementioned law of 13 November 2014 is also applicable to child pornography-related content). It is not an arbitrary or discretionary procedure aimed at restricting freedom of expression in France or at exerting pressure on journalists because of their opinions. The procedures are defined by Decree No. 2015-125 of 5 February 2015. It prevents Internet users from accessing sites that incite people to commit terrorist acts or glorify such acts.

In parallel with the blocking mechanism, the aforementioned law of 13 November 2014 also made provision for the possible delisting of these sites. Decree No. 2015-253 of 4 March 2015 specifies the procedure for requesting search engine or directory operators to delist the offending sites so that they no longer appear in search results.

These measures are strictly regulated:

- The measure of administrative blocking or delisting takes place within the framework of the subsidiarity principle, in other words it is intended for use only as a last resort after the administration has requested the publisher or web host to remove the contentious content, subject to the provision that the publisher, as required by law, has made available information enabling the identification of the web host and, if necessary, of the publisher itself;
- Applications for removal, blocking or delisting are subject to verification by a suitably qualified expert appointed by the National Commission for Data Protection and Liberties (CNIL). In order to avoid a measure that would be disproportionate or excessive, this expert is responsible for ensuring that the requests for removal, blocking or delisting are well founded. If this is not the case, this person recommends that the irregular situation be rectified. If this recommendation is not followed, the expert may refer the case to the administrative judge in summary proceedings or by petition. The expert also ensures the conditions for the establishment, updating, communication and use of the list of blocked sites. Contrary to the fears when the law was adopted, the expert noted in his two annual monitoring reports that there had been no case of over-blocking, which shows that the administrative authorities “respect the principle of proportionality applicable to infringement of freedom of expression”;
- These administrative measures are taken under the supervision of a judge. Any citizen who believes that his or her rights are being infringed by the blocking of these sites has recourse to the justice system and can request the lifting of the ban or compensation.

Assessment of the implementation of this regulation

Between March 2016 and February 2017, the administrative authorities considered 2,189 requests for removal, 165 requests for blocking and 846 requests for delisting. In almost nine out of ten cases, the request for removal was implemented. Furthermore, in 2016, the expert considered only eight recommendations that were followed by the administrative authorities or were withdrawn by the expert following the provision of new contextual elements. All of these elements show that the administrative authorities make justified and proportionate use of this administrative procedure.

Furthermore, Article 11 of Law No. 55-385 of 3 April 1955 on the state of emergency, which provides for the Minister of the Interior to “take all measures to secure the interruption of any online public communication service encouraging the commission of terrorist acts or glorifying them” without the intervention of the expert, has never been used to date.

In conclusion, France would like to reiterate its call for all its partners to comply with the international commitments to which we have freely subscribed and to fully respect freedom of expression and freedom of the press, which constitute fundamental elements for the development of civil societies and the consolidation of democratic institutions.